

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	Criminal No.1:00-CR-00247
	:	
v.	:	(Judge Caldwell)
	:	
GERALD JIVENS	:	(Electronically Filed)
	:	

EMERGENCY MOTION FOR RELIEF
UNDER 18 U.S.C. § 3582 (c) (2)

AND NOW, comes the defendant, Gerald Jivens, by his attorney Lori J. Ulrich of the Federal Public Defender's Office, and files this Emergency Motion for Relief Under 18 U.S.C. § 3582(c) (2) and in support thereof avers as follows:

1. On December 5, 2000, the defendant, Gerald Jivens, pleaded guilty to a two count Superceding Information charging him with interstate travel in aid of racketeering (unlawful distribution and possession with intent to distribute crack cocaine) in violation of 18 U.S.C. § 1952(a)(3) (2 Counts).

2. The presentence report calculated his guidelines as follows: the base offense level was 32, representing 50G - 150G of cocaine base; three levels were deducted for acceptance of responsibility; and the total offense level was 29.

3. With an offense level of 29, and a criminal history category of IV, Mr. Jivens' guidelines were 120 months. The guidelines were calculated at 121-151, however, the statutory maximum for the two offenses was 120 months.
4. On June 5, 2001, Mr. Jivens was sentenced to 120 months, 60 months on each count to be served consecutively.
5. The docket sheet reflects that on June 12, 2002, Mr. Jivens' sentence was reduced by 6 months after a Motion for Reduction of Sentence Pursuant to Fed. R. Crim. P. 35(b) was filed.
6. Mr. Jivens' projected release date is February 21, 2009.
7. On November 1, 2007, the guidelines were amended reducing the crack cocaine guidelines by two levels. The amendment will be retroactive as of March 3, 2008. (Amendment 706)
8. Pursuant to 18 U.S.C. § 3582 (c) (2), "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . upon motion of the

defendant . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable”

9. Under the new guidelines, Mr. Jivens’ guideline range would be 100-120 months. This range represents a base offense level of 30 (50G - 150G of crack cocaine); a three level reduction for acceptance of responsibility; a total offense level of 27; and a criminal history category of IV.

10. Mr. Jivens received a 5% departure from the original guideline range.

11. If Mr. Jivens were to receive a 5% reduction from the low end of the new guideline range, his sentence would be 95 months. This would be a reduction of 19 months.

12. If the Court were to impose 95 months, Mr. Jivens’ may be eligible for immediate release.

13. Mr. Jivens will waive his right to a hearing if there are no contested issues and the Court is inclined to grant the reduction. If there are contested issues and either the Government or the Court is opposing a reduction, Mr. Jivens is

requesting a hearing but waives his right to be present at the hearing.

WHEREFORE, the defendant, Gerald Jivens respectfully requests that This Honorable Court grant his Emergency Motion for Relief Pursuant to 18 U.S.C. § 3582 (c) (2).

Respectfully submitted,

Date: February 25, 2008

s/ Lori J. Ulrich

LORI J. ULRICH, ESQUIRE

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CERTIFICATE OF SERVICE

I, Lori J. Ulrich of the Federal Public Defender's Office, do hereby certify that I served a copy of the foregoing **EMERGENCY MOTION FOR RELIEF UNDER 18 U.S.C. § 3582 (c) (2)**, via Electronic Case Filing, or by placing a copy in the United States mail, first class in Harrisburg, Pennsylvania, addressed to the following:

WILLIAM A. BEHE, ESQUIRE

[REDACTED]
[REDACTED]
[REDACTED]

DREW THOMPSON

[REDACTED]
[REDACTED]
[REDACTED]

GERALD JIVENS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date: February 25, 2008

/s/ Lori J. Ulrich

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